IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6773 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KHERUBIBI W/O ABDULBHAI MOHAMMEDBHAI PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6773 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MS HB PUNANI AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 06/12/2004

ORAL JUDGEMENT

Heard Ms Subhadra Patel, for the petitioner and learned AGP Ms Punani for the other side.

2. The petitioner is a lady and she has challenged the order of detention passed by the Police Commissioner of Ahmedabad City being the order of detention No.PCB/DTN/148A/2004 dated 19th May, 2004 passed against her by the Police Commissioner, Ahmedabad City, branding the petitioner as a bootlegger within the meaning of Section 2(b) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

3. The petitioner has been detained by the authority mainly on the ground of her involvement in five different offences punishable under the Prohibition Act and as per the satisfaction recorded by the detaining authority the activities of the petitioner was dangerous to public health and prejudicial to the maintenance of public order. In the grounds of detention conveyed to the petitioner the authority has referred to five offences in a tabular form. The first offence that was taken into consideration by the detaining authority was of 24th February, 2003 and the last offence was registered of 16th May, 2004. It can legitimately be said that she was found to be involved in the business of country-made liquor on five different occasions in a calender year. It is true that no statement of independent witnesses have been recorded in the present case but it is not necessary to record such statement and place it before the detaining authority. The detaining authority is statutorily authorised to exercise the powers vested in it in the light of the scheme of Section 3(2) read with Section 9(1) of the PASA Act. The affidavit-in-reply submitted by learned AGP, Ms H.B.Punani, on behalf of the Police Commissioner today taken on record but there is no formal affidavit on behalf of the State of Gujarat. The order is assailed on various grounds. However, Mrs Patel has focussed her argument mainly on the ground that the delay caused in dealing with the representation made by the present petitioner and unexplained delay of the time consumed in communicating the decision of the State Government to the detenu should be held fatal to the detention and the order should be quashed or at least the detention should be quashed.

4 To appreciate this submission, it is necessary to mention certain facts. The representation was made by the petitioner-detenu on 2nd June, 2004, which had reached the office of the Commissioner of Police, Ahmedabad City, on 3rd June, 2004. This representation was forwarded to the competent authority in the State of Gujarat on 5th June, 2004. Though 4th June, 2004 was a

working day, no steps have been taken and no justifiable reasons are emanating from the affidavit-in-reply. The Government had taken the decision of rejection of the representation on 9th June, 2004 but there is nothing on record to show that when the representation was received by the responsible officer of the State Government why there was delay in deciding the same. It is also relevant to note that though the decision was taken on or about 6th June, 2004 the communication as to rejection was made to the detenu on 14th June, 2004. The petioner was at the relevant point of time was in Central Prison, Vadodara. Therefore, in absence of any explanatory affidavit the ratio of the following decisions would help the petitioner:-

(1) AIR 1981 SC 1126 (Harish Pahwa v/s State of UP)
(2) 2004(2) GLR 1051 (Sohanlal Vishnoi)
(3) 2000(3) GLR 2696 (Ranubhai Bhikhabhai Bharwad)

5 The ratio of the above decisions would help the petitioner. This Court today considering the ratio of these 3 decisions allowed Special Civil Application No.13219 of 2004. The petitioner also deserves to be set at liberty by allowing the petition. The petition is, therefore, allowed.

6 For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 19th May, 2004 passed by Commissioner of Police, Ahmedabad City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if she is not required to be detained in any other case. Rule is made absolute. Direct Service is permitted.

[C. K.BUCH, J]
*mohd